

## **ADMINISTRATIVE PANEL DECISION**

Neurocog Pty Ltd v. Domain Administrator, CentralNic Ltd

Case No. D2024-1076

### **1. The Parties**

The Complainant is Neurocog Pty Ltd, Australia, represented by LegalVision ILP Pty Ltd, Australia.

The Respondent is Domain Administrator, CentralNic Ltd, United Kingdom.

### **2. The Domain Name and Registrar**

The disputed domain name <neurocog.com> is registered with Internet Domain Service BS Corp (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 12, 2024. On March 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 13, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Redacted For Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 14, 2024, providing the registrant and contact information disclosed by the Registrar, which itself appeared to be a privacy service provided by another registrar (CentralNic Ltd.), and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on March 15, 2024.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on March 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 18, 2024.

The Center appointed David H. Bernstein as the sole panelist in this matter on April 22, 2024. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

Because the Respondent did not submit a Response, the Panel has carefully reviewed the record to ensure that the Center fulfilled its responsibility to employ reasonably available means calculated to achieve actual notice to the Respondent, as mandated by paragraphs 2(a) and 4(g) of the Rules. See *Nicole Kidman v. John Zuccarini*, WIPO Case No. [D2000-1415](#). On March 22, 2024, the Center sent emails to the email address associated with the Respondent, notifying it of the Complaint and transmitting the Complaint and its Annexes, and sent messages through the Respondent's Domain Contact form (given that the Respondent itself appears to be a privacy service, and the email addresses associated with the underlying registrant were not provided). The Center also sent a notice of the Complaint via mail courier to the address associated with the Respondent privacy service; courier tracking indicates that the notice was delivered and signed for on March 27, 2024. It thus appears that the Respondent privacy service received actual notice of these proceedings; whether that service also provided notice to the underlying registrant is unknown. Regardless, the Panel is satisfied that the Center has employed "reasonably available means" in attempting to provide actual notice to the Respondent and has thus fulfilled its obligation pursuant to paragraphs 2(a) and 4(g) of the Rules.

#### **4. Factual Background**

The Complainant Neurocog Pty Ltd, a registered Australian proprietary company, is a clinical psychology practice that also operates an associated mental health mobile application. Aside from patient services, the Complainant also provides consulting services in the area of practice management for other health professionals. The Complainant has a practice of about 60 patients, as well as several practitioners engaging its consulting services.

The Complainant has been trading continuously under the name "Neurocog" since 2016. The Complainant owns an Australian trademark registration (2108216) for NEUROCOG for a variety of services, including advisory services relating to scientific research and behavioral analysis for medical purposes. That trademark has a priority date of August 12, 2020. The Complainant is also the owner of a registered trademark in the United States of America for NEUROCOG for similar services (6,366,455). That trademark has a priority date of August 3, 2020.

The Complainant also owns a domain name incorporating the NEUROCOG mark, <neurocogsystem.com>.

The Respondent is Domain Administrator, CentralNic Ltd, and has a United Kingdom business address. Respondent created the Disputed Domain Name, <neurocog.com>, on June 16, 2011.

The disputed domain name currently resolves to a parking website, which indicates that the disputed domain name is available for sale. A link on the website directs to a form that can be completed to make an offer to purchase the disputed domain name. The Complainant alleges that it completed and submitted this form and was advised by GoDaddy's domain broker service that the disputed domain name was available for purchase for AUD 12,000. The Complainant's historical search of websites associated with the disputed domain name through the internet archive Wayback Machine suggests that the disputed domain name has only been used to advertise its sale.

## **5. Parties' Contentions**

### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

First, the Complainant contends that the domain name is identical to the Complainant's trademark, incorporating the Complainant's mark in full without any additions or changes.

Second, the Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name because there is no evidence of the Respondent's use of or demonstrable preparation to use the disputed domain name in connection with the offering of goods or services nor to make any legitimate noncommercial or fair use of the domain name. Rather, the disputed domain name appears to have remained "parked" since it was originally registered by the Respondent in 2011.

Third, the Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant alleges that the disputed domain name was registered to engage in cybersquatting, as evidenced by the payment requested of the Complainant by the Respondent, which is in gross excess of the Respondent's registration costs. The Complainant argues that, although it did not begin trading under the mark until 2016, five years after Respondent's registration of the disputed domain name, it appears that the disputed domain name was acquired primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to other third parties who had rights in the same mark. Of note, in 2011, just ten days before the Respondent registered the disputed domain name, a third party not involved in the current dispute, BCBL Basque Center on Cognition, filed a trademark registration in the United Kingdom for NEUROCOG (UK00910020873). The Complainant argues that the Respondent, a United Kingdom-based entity, "ought to have known" about this United Kingdom Registration when it registered the disputed domain name in 2011.

### **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy requires that a complainant must prove each of the following three elements by a preponderance of the evidence to obtain an order that a disputed domain name be transferred:

- 1) the disputed domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- 2) the respondent has no rights or legitimate interests in respect of the disputed domain name; and
- 3) the disputed domain name has been registered and is being used in bad faith.

For the reasons stated below, the Panel finds that the Complainant has not proven all three elements by a preponderance of the evidence.

### **A. Identical or Confusingly Similar**

The Complainant's trademark registrations establish its trademark rights for the purpose of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.2.1. The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the Complainant's mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds that the Complainant has established the first element of the Policy.

## **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which a respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds that the Complainant has made out a prima facie case. The name of the underlying Respondent is unknown, but to the extent the Respondent is the privacy service, that name (CentralNic) has no apparent connection to the disputed domain name that would suggest that it is related to a trademark or trade name in which the Respondent has rights (paragraph 4 (c)(ii) of the Policy). The Respondent does not appear to be making a legitimate noncommercial or fair use without intent for commercial gain (paragraph 4 (c)(iii) of the Policy); rather, the disputed domain name resolves to a website that indicates that the disputed domain name is for sale. Finally, there is no indication in the record that the disputed domain name has been used by the Respondent in connection with a bona fide offering of goods or services (paragraph 4(c)(i) of the Policy).

Because the Complainant has made out a prima facie case, the burden has shifted to the Respondent to come forward with evidence to rebut that prima facie case, and to show that it has some rights or legitimate interests in respect of the disputed domain name. The Respondent has not done so.

Accordingly, the Panel finds that the Complainant has established the second element of the Policy.

## **C. Registered and Used in Bad Faith**

It is by now well accepted that a complainant must prove both bad faith registration and bad faith use in order to prevail in a UDRP proceeding. It also is well accepted that panels generally will not find bad faith registration when the domain name was registered prior to the creation of trademark rights. [WIPO Overview 3.0](#), section 3.8.1.

Notwithstanding these well accepted principles, and the fact that the Complainant did not acquire trademark rights until five years *after* the disputed domain name was registered, the Complainant has argued that the Respondent registered the disputed domain name in bad faith. The Complainant argues that the Respondent registered the domain name with bad faith not towards the Complainant and its mark, but rather towards a different NEUROCOG trademark, registered by a third party in the United Kingdom, which mark is no longer subsisting.

That argument is wholly without merit and is foreclosed by the clear language of the Policy and the [WIPO Overview 3.0](#). The Policy makes clear that the bad faith must be in relation to “the complainant” and “*the* complainant’s mark”, not some unrelated third party or some third party’s mark. Policy, paragraph 4(b)(i), (iv) (emphasis added). Similarly, the [WIPO Overview 3.0](#) makes clear that panels generally will not find bad faith registration when the domain name was registered “before *the* complainant’s trademark rights accrue”. [WIPO Overview 3.0](#), section 3.8.1 (emphasis added).

Because the disputed domain name was registered five years prior to the Complainant's development of trademark rights, the disputed domain name cannot have been registered in bad faith as to the Complainant. The Panel thus finds that the Complainant has not established the third element of the Policy.

#### **D. Reverse Domain Name Hijacking**

Paragraph 15(e) of the Policy provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking ("RDNH") or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. It is the Panel's obligation to consider whether a finding of RDNH is appropriate even if the Respondent has not requested such a finding, and even in the absence of a Response. [WIPO Overview 3.0](#), section 4.16.

As explained above, given that the Complainant only began trading under the NEUROCOG mark five years after the Respondent registered the disputed domain name, there could not have been bad faith registration. That means that the Complaint was doomed to failure. This issue is not close or subject to ambiguity; as explained above, both the Policy and the [WIPO Overview 3.0](#) make it clear that bad faith only can be found if the Respondent acted in bad faith towards the Complainant and its trademark rights. That the Complainant was represented by counsel only heightens the bad faith conduct that underlay the filing of this Complaint.

Accordingly, the Panel finds that the Complaint was brought in bad faith and constitutes an attempt at RDNH.

#### **7. Decision**

For the foregoing reasons, the Complaint is denied. Moreover, the Panel finds that the Complaint has been brought in bad faith and constitutes an attempt at Reverse Domain Name Hijacking.

*/David H. Bernstein/*

**David H. Bernstein**

Sole Panelist

Date: May 6, 2024